# STATE OF MICHIGAN

# IN THE SUPREME COURT

IN THE MATTER OF: Docket No. 128843

**HON. DAVID MARTIN BRADFIELD** Formal Complaint No. 79
Judge, 36th District Court
Detroit, MI 48226

---

PAUL J. FISCHER (P35454)
*Judicial Tenure Commission*
Cadillac Place
3034 W. Grand Blvd., Ste 8-450
Detroit, MI 48202
(313) 875-5110

BRIAN EINHORN (P13130)
REGINA T. DELMASTRO (P55419)
*Attorneys for Respondent*
4000 Town Center, Suite 909
Southfield, MI 48075
(248) 355-4141

---

# RESPONDENT'S REPLY BRIEF

***** ORAL ARGUMENT REQUESTED *****

LAW OFFICES COLLINS, EINHORN, FARRELL & ULANOFF, P.C. 4000 TOWN CENTER STE 909, SOUTHFIELD, MI 48075 (248) 355-4141

# TABLE OF CONTENTS



# INDEX OF AUTHORITIES

***Cases***



***Other Authorities***



***Rules***



***Constitutional Provisions***

LAW OFFICES COLLINS, EINHORN, FARRELL & ULANOFF, P.C. 4000 TOWN CENTER STE 909, SOUTHFIELD, MI 48075 (248) 355-4141

Petitioner argues that under Constitution Article 6, Section 4, the Supreme Court has the authority, under the doctrine of superintending control, to order the JTC's recommendation of psychological treatment. The cases cited in petitioner's brief do not support this proposition.

Petitioner cites *In re Matter of Huff*, 352 Mich 402; 91 NW2d 613 (1958). *Huff* did not involve reliance on superintending control to fashion a judicial discipline remedy; it addressed the Court's authority to reassign judges. In *Huff*, the Court entered a formal order approving the court administrator's reassignment of a 10th Circuit judge to serve as judge in the 3rd Circuit. On the first day of his reassignment, the judge appeared at the 10th Circuit and refused to serve in the 3rd Circuit. This Court stated that under Article 6, Section 4, the Court, without legislation, has the power to reassign judges to another circuit "in such manner and to such extent as to this Court shall seem appropriate and necessary in order to improve the administration of justice[.]" *Id.* at 419.

Petitioner also relies on *In re Matter of Probert*, 411 Mich 210; 308 NW2d 773 (1981). *Probert* did not confer superintending control. The issue was whether the Court was empowered to, upon recommendation of the JTC, permanently enjoin the judge in question from holding judicial office in the future. The Court indicated that "[t]he four types of discipline § 30 empowers this Court to impose censure, suspension, removal, and retirement do not appear to comprehend the permanent injunction sought here." *Id.* at 229. The Court determined that neither of the words "suspension" nor "removal" meant permanent removal. *Id.* at 229 n 11. The Court indicated that Section 4 neither permits nor forbids the Court from issuing a permanent injunction against the holding of judicial office, and the lack of superintending power to remove did not itself entail a lack of power to permanently enjoin; however, such an injunction "might implicate the right of the voters of Michigan to choose those who would hold judicial office." *Id.* at 232. The Court concluded that "§ 4 does not comprehend the power to permanently enjoin a person from holding judicial office." *Id.*

LAW OFFICES COLLINS, EINHORN, FARRELL & ULANOFF, P.C. 4000 TOWN CENTER STE 909, SOUTHFIELD, MI 48075 (248) 355-4141

Petitioner also cites MCR 9.203(C), the court rule indicating that JTC proceedings are subject to the superintending control of the Supreme Court. The only case citing this rule did not involve the authority to fashion a remedy recommended by the JTC. In *In re Matter of Honorable William Runco*, 590 NW2d 288 (1999), the Court granted a motion for immediate consideration and for stay of proceedings under MCR 9.203(C). The complaint for superintending control was later dismissed. *Runco*, 459 Mich 1251 (1999). Just because the court rule confers superintending control on the Supreme Court over JTC proceedings does not compel the conclusion that the court rule authorizes the type of ongoing psychological counseling with JTC oversight that is sought here.

The recent amendment to MCR 9.205(B), which provides for costs to be paid in addition to any other sanction, is not analogous to the present matter. Petitioner makes the unsupported quantum leap: "Consequently, if the Court can impose fees based on a recommendation of the JTC, then it clearly may order Respondent to undergo psychological treatment."[1] Petitioner cites Justice Corrigan's concurring opinion supporting the amendment, but conveniently omits her focus on the fact that "[a] decision to authorize the assessment of costs does not correspond to creating a new mode of discipline . . . [r]ather, assessing costs in a JTC proceeding provides a procedural mechanism to protect governmental resources. . ."[2] In contrast, imposing psychological counseling would certainly be a new form of discipline, *not* simply a procedural mechanism.

In previous judicial disciplinary matters, psychological treatment has been accomplished by agreement, not by order. Contrary to petitioner's characterization, respondent does not contend that this Court derives its authority from the parties' agreement. Respondent merely states a fact. This Court has never ordered psychological treatment against a judge, and

---

[1] Petitioner's Brief, p 32.

has expressly stated that undergoing counseling is "not judicial discipline" and therefore not encompassed in this Court's order. *In re Bradfiefld*, 465 Mich 1308 (2002).

It is not the Judicial Tenure Commission's business whether respondent seeks treatment, whom he sees for treatment, and when. Respondent fully understands what he has to do to avoid appearing before the Commission again, and it is up to him to take steps on his own to ensure that it does not happen.

Remand to the Commission is unnecessary. This Court must impose a sanction consistent with the factors set forth in *In Re Brown*, 461 Mich 1291; 625 NW2d 744 (1999) as discussed in detail in respondent's main brief. Regardless of the psychological treatment issue, the recommended one-year suspension is excessive.

**COLLINS, EINHORN, FARRELL & ULANOFF, P.C.**

By: 

BRIAN D. EINHORN (P13130)
REGINA T. DELMASTRO (P55419)
*Attorneys for Hon. David Martin Bradfield*
4000 Town Center, Suite 909
Southfield, MI 48075
(248) 355-4141

Dated: March 8, 2006
F:\FILES\05\058378\PLEADINGS\SPC REPLY BRIEF.DOC

LAW OFFICES COLLINS, EINHORN, FARRELL & ULANOFF, P.C. 4000 TOWN CENTER STE 909, SOUTHFIELD, MI 48075 (248) 355-4141

2 Staff Comment to 2005 Amendment.